

## COMMISSION DECISION

of 13 December 1994

authorizing the granting by Spain of aid to the coal industry in respect of 1994

(Only the Spanish text is authentic)

(Text with EEA relevance)

(94/1072/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry <sup>(1)</sup>, and in particular Articles 8 and 9 thereof,

Whereas:

## I

By letter of 30 May 1994, pursuant to Article 8 (1) of Decision No 3632/93/ECSC, Spain notified the Commission of its guidelines for a plan to reduce costs and/or activity in the coal industry.

By letter of 7 November 1994, Spain notified the Commission of a modernization, rationalization, restructuring and activity-reduction plan for the coal industry covering the period from 1 January 1994 to 31 December 1997.

By letter of 29 November 1994, Spain forwarded further information.

By letters of 7 and 29 November 1994, pursuant to Article 9 (1) of Decision No 3632/93/ECSC, Spain notified the Commission of the financial support it intended to grant to the coal industry in the 1994 financial year.

Under Decision No 3632/93/ECSC, the Commission must:

- give an opinion as to the conformity of the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry with the general and specific objectives of the Decision,

- rule on the following financial measures relating to 1994:

- aid of Pta 107 426 million to cover operating losses,

- aid of Pta 14 715 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry,

- aid of Pta 8 374 million to cover the technical costs of closing down extraction installations as a result of measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry.

Spain's proposed financial measures for the coal industry conform to the provisions of Article 1 of Decision No 3632/93/ECSC and must be approved by the Commission, in accordance with Article 9, on the basis of the general criteria and objectives laid down in Article 2 and the specific criteria established by Articles 3 and 4 of the Decision. In accordance with Article 9 (6), the Commission must assess the conformity of the measures with the notified plans.

## II

Spain's notified plan to modernize, rationalize, restructure and reduce the activity of the coal industry must be examined in the light of the general criteria and objectives laid down in Article 2 (1) and the specific criteria and objectives established by Articles 3 and 4 of Decision No 3632/93/ECSC.

The plan's objectives are based on the guidelines for coal set out in Spain's National Energy Plan for 1991 to 2000. Accordingly, the notified plan is a continuation of the Restructuring, Rationalization and Modernization Plan for the Coal Industry for 1990 to 1993 notified by Spain as requested by the Commission in Decisions

<sup>(1)</sup> OJ No L 329, 30. 12. 1993, p. 12.

90/198/ECSC <sup>(1)</sup> and 91/3/ECSC <sup>(2)</sup>. By letter of 7 March 1994, Spain notified the Commission of the results of its 1990 to 1993 Plan.

### III

The 1994 to 1997 Plan is designed to make the coal industry more competitive and thereby lead to the degression of aids.

The Plan lays down modernization, rationalization and restructuring measures which coal undertakings must implement to reduce their production costs over the period from 1994 to 1997 in order to receive the operating aid provided for in Article 3 of Decision No 3632/93/ECSC.

Undertakings which are unable to reduce their production costs or which, despite reducing them, are still far from achieving economic viability, must be included in an activity-reduction plan of the type laid down in Article 4 of Decision No 3632/93/ECSC.

For the period 1994 to 1997, Spain's objective is a 2% annual reduction in production costs covered by aid, at constant prices, in those undertakings which receive operating aid within the meaning of Article 3. This reduction could be greater for certain open-cast mines, given that aid in such cases must cease by 31 December 1997.

Production units or undertakings which receive aid to reduce activity in accordance with Article 4 will be obliged gradually to reduce their production capacity through total or partial closure.

Spain has informed the Commission of its intention to notify a further plan for the period 1998 to 2002, to be drafted in the light of the progress made, principally with implementation of the social and regional measures accompanying the restructuring of the coal industry.

The notified plan includes the restructuring, rationalization and modernization of 65 undertakings, 50 of which are small with unit production of less than 200 000 tonnes a year, and a reduction in activity together with total or partial closures of underground production units in 38 undertakings. By 31 December 1997 underground production will have been reduced by around 12% and the workforce by 27% compared with 1993. In this respect, the Commission must, on the basis of the Spanish Government's notification, pay particular attention to the restructuring of Minero Siderúrgica de

Ponferrada SA, which is the largest private undertaking in the sector. This undertaking was declared insolvent on 2 July 1993. Following a major write-off of debts, primarily by the Social Security funds, insolvency proceedings were terminated on 14 July 1994.

In view of the unfavourable geological conditions of Spain's coalfields, which limit the possibility of modernization and rationalization, aid can be significantly reduced only through restructuring, or through the progressive and continuous reduction of mining by the undertakings in question.

The plan notified by Spain conforms to the provisions of the first two indents of Article 2 (1) of Decision No 3632/93/ECSC, namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids, and to solve the social and regional problems created by total or partial reductions in activity.

In evaluating the plan, and being aware that in the light of coal prices on international markets the undertakings concerned would be able to make only limited progress towards greater economic viability, the Commission recognized the priority need to attenuate as far as possible the social and regional impact of restructuring and to provide coal undertakings with a medium-term outlook so that they could complete their restructuring.

Spain will ensure that the elements of the plan comply with Article 9 (7) of Decision No 3632/93/ECSC. As regards contracts concluded between electricity and coal producers, the Commission reserves the right to decide the consequences of any decision it might adopt in this field, in accordance with Article 65 of the ECSC Treaty or Article 85 (3) of the EC Treaty.

In view of the above, the Commission considers the plan notified by Spain to be in conformity with the specific objectives established in Articles 3 and 4 of Decision No 3632/93/ECSC, provided that all the conditions laid down in the latter are complied with, and in particular the condition relating to discrimination between producers, purchasers and consumers of coal in the Community.

In view of the particular circumstances affecting Minero Siderúrgica de Ponferrada SA, the Commission is giving its opinion, in accordance with Article 8 (3) of the Decision, on the conformity of that undertaking's plan with the general and specific objectives, without prejudging whether the measures planned are capable of attaining those objectives. Accordingly, Spain will report to the Commission, no later than 30 March and 30 September of 1995, 1996 and 1997, giving details of the level of compliance with that undertaking's restructuring plan.

<sup>(1)</sup> OJ No L 105, 25. 4. 1990, p. 19.

<sup>(2)</sup> OJ No L 5, 8. 1. 1991, p. 27.

## IV

The aid of Pta 107 426 million which Spain plans to grant the coal industry is intended to compensate in full or in part for operating losses.

Spain's coal producers (Carbunion) and electricity producers (Unesa) have agreed, in respect of 1994, to a sales price for Spanish coal under the new system of public contracts for coal used in power stations (NSCCT) which, though still considerably higher than the prices obtaining on the world market, is nonetheless closer to them than the reference price which prevailed up to 31 December 1993.

The notified sum subdivides into operating aid of Pta 29 219 million in accordance with Article 3 of Decision No 3632/93/ECSC and aid of Pta 78 207 million to reduce activity in accordance with Article 4 thereof.

The inclusion of this measure in the notified modernization, rationalization, restructuring and activity-reduction plan, and the degression of aid, quantities and costs planned for 1994 meet the objectives of the first and second indents of Article 2 (1) of the Decision, namely to make, in the light of coal prices on international markets, further progress towards the economic viability of the 65 undertakings concerned with the aim of achieving degression of aids, and to solve the social and regional problems caused by developments in the mining industry.

Of the operating aid of Pta 29 219 million, Pta 22 239 million will be covered by the electricity producers in accordance with NSCCT-related provisions, while the remaining Pta 6 980 million will come from State budgets.

As established in Article 3 of Decision No 3632/93/ECSC, the observed degression of aid is helping to improve the economic viability of the undertakings concerned by reducing production costs.

Of the aid of Pta 78 207 million to reduce activity, Pta 20 591 million will be covered by the electricity producers in accordance with NSCCT-related provisions, while the remaining Pta 57 616 million will come from State budgets.

Of the aid of Pta 57 616 from the general State budget, Pta 49 176 million, Pta 5 438 million and Pta 3 002 million is intended for the Hunosa, Minas de Figaredo SA and Mina de la Camocha SA undertakings of the central Asturias coalfield respectively.

This aid forms part either of a plan for the progressive and continuous reduction of activity or of a closure plan, and therefore complies with Article 4 of Decision No 3632/93/ECSC.

In its notification, Spain guaranteed that for each undertaking or production unit the aid granted would not exceed the difference between production costs and foreseeable revenue from the free agreement between the parties.

The Commission finds that a sum of Pta 1 646 million covering part of the operating losses of Hunosa corresponds to activities other than coal production, on which the Commission cannot give an opinion within the framework of Decision No 3632/93/ECSC.

Spain will ensure that those arrangements comply with Article 9 (7) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

## V

The aid of Pta 14 715 million which Spain is proposing to grant will cover compensation for the 7 300 workers in Spanish coal undertakings who will lose their jobs or have to take early retirement under the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry.

Parts of this aid, amounting to Pta 3 606 million, Pta 986 million and Pta 248 million, are to be granted to the Hunosa, Minas de Figaredo SA and Mina de la Camocha SA undertakings respectively and are to be covered by the general State budget.

The remaining Pta 9 875 million is intended for the other undertakings affected by modernization, rationalization and restructuring measures or by measures to reduce activity and will be covered by financial support from the Electricity Compensation Office (Ofico). Ofico is a public body financed by contributions from electricity-generating companies through a levy on electricity prices charged to consumers.

The financial support from Ofico is designed to repay to the electricity-generating companies certain amounts they have to pay to the coal-producing undertakings. The Order of the Spanish Ministry of Industry and Energy of 6 July 1994 and the Resolution of the Secretariat General of Energy and Mineral Resources which implements it establish compensatory measures financed by Ofico to assist workers from coal undertakings which have not signed a contract with the State who take early retirement or lose their jobs as a result of the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry.

Ofico's support constitutes 'aid' within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, which refers to the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid. Accordingly, the Commission must give an opinion on this measure in accordance with Article 9 of the Decision.

Those financial measures relate to action made necessary by the modernization, rationalization and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

Pursuant to Article 5 of Decision No 3632/93/ECSC, the aid mentioned explicitly in the Annex to the Decision, namely the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age and other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization, can be considered compatible with the common market provided that the amount paid does not exceed such costs.

Spain will ensure that these arrangements comply with Article 9 (7) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

## VI

The aid of Pta 8 374 million which Spain proposes to grant is intended to cover the loss of value of the fixed assets of coal undertakings which have to close down totally or partially. Furthermore, those undertakings have to bear exceptional costs resulting from the progressive closures which will take place, initially, up to 31 December 1997.

Part of this aid, totalling Pta 2 504 million, is to be granted to Hunosa and covered by the general State budget. The remaining Pta 5 870 million is intended for the other undertakings reducing their activity and will be covered by financial support from Ofico.

The purpose of this support is to repay to the electricity-generating companies certain amounts they have to pay to the coal-producing undertakings. The Order of the Spanish Ministry of Industry and Energy of 6 July 1994 and the Resolution of the Secretariat General of Energy and Mineral Resources which implements it establish compensatory measures financed by Ofico to

assist coal undertakings which have not signed a contract with the State and which will have to reduce their production capacity under the plan.

Ofico's support constitutes aid within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, which refers to the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid. Accordingly, the Commission must give an opinion on this measure in accordance with Article 9 of the Decision.

Those financial measures relate to action made necessary by the modernization, rationalization and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

Pursuant to Article 5 of Decision No 3632/93/ECSC, the aid mentioned explicitly in the Annex to the Decision, namely exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation), can be considered compatible with the common market provided that the amount paid does not exceed such costs.

Spain will ensure that the arrangements comply with Article 9 (7) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

## VII

The Spanish Government will ensure that the granting of the operating aid covered by this Decision gives rise to no discrimination between producers, purchasers and consumers in the Community coal market.

In view of the above and on the basis of the information provided by Spain, the aid and measures planned to assist the coal industry are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

This Decision does not prejudice the compatibility with the Treaties of any contracts which may be concluded between coal and electricity producers.

In accordance with the second indent of Article 3 (1) and with Article 9 (2) and (3) of Decision No 3632/93/ECSC,

the Commission must verify that aid authorized for current production relates solely to the purposes set out in Articles 3 and 4 of the Decision. In this respect, it must be informed of the amounts and distribution of payments,

HAS ADOPTED THIS DECISION:

*Article 1*

Spain is hereby authorized to pay the following aid in respect of the 1994 financial year:

- aid of Pta 105 780 million to cover operating losses by coal undertakings,
- aid of Pta 14 715 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry,
- aid of Pta 8 374 million to cover the technical costs of closing down mining installations as a result of the measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry.

*Article 2*

Spain shall ensure that any unspent or overestimated aid covered by this Decision is repaid to it.

*Article 3*

Spain shall notify the Commission, by 30 June 1995 at the latest, of the amount of aid actually paid in respect of the 1994 financial year.

*Article 4*

Spain shall report to the Commission, by 30 March 1995 and 30 September 1995 at the latest, giving details of the level of compliance with the restructuring plan by Minero Siderúrgica de Ponferrada SA.

*Article 5*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 December 1994.

*For the Commission*

Marcelino OREJA

*Member of the Commission*